

**SEALED
DOCUMENT****UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE****U.S. DISTRICT COURT
DISTRICT OF NH
FILED****IN RE: ADMINISTRATIVE SUBPOENAS
TO GOOGLE, INC. PURSUANT TO
18 U.S.C. § 2705(b)**Case No. 1:16-MC-50-AJ **2016 AUG 1 A 9 31**

Filed Under Seal - Level I

**APPLICATION FOR ORDER COMMANDING GOOGLE, INC.
NOT TO NOTIFY ANY PERSON OF THE EXISTENCE OF SUBPOENA**

The United States requests that the Court order Google, Inc. not to notify any person (including the subscribers or customers of the accounts listed in the administrative subpoena) of the existence of the attached subpoena until further order of the Court.

Google, Inc. is a provider of an electronic communication service, as defined in 18 U.S.C. § 2510(15), and/or a remote computer service, as defined in 18 U.S.C. § 2711(2). Pursuant to 18 U.S.C. § 2703, the Department of Homeland Security, Homeland Security Investigations, issued the attached subpoena, which requires Google, Inc. to disclose certain records and information to the Department of Homeland Security. This Court has authority under 18 U.S.C. § 2705(b) to issue “an order commanding a provider of electronic communications service or remote computing service to whom a warrant, subpoena, or court order is directed, for such period as the court deems appropriate, not to notify any other person of the existence of the warrant, subpoena, or court order.” Id.

The attached subpoena was issued in connection with an investigation of several unidentified individuals who sent and received images of child pornography through their respective Google e-mail accounts. The attached subpoena seeks subscriber information and IP address records related to the accounts from which the images of child pornography were sent, or into which the child pornography images were received. The premature disclosure of the

existence of the subpoena will alert the account subscriber to the pending investigation, which may cause him or her to destroy or alter evidence, or flee the United States to avoid prosecution.

In this case, a non-disclosure order would be appropriate because the attached subpoena relates to an ongoing criminal investigation that is neither public nor known to all of the targets of the investigation, and its disclosure may alert the targets to the ongoing investigation.

Accordingly, there is reason to believe that notification of the existence of the attached subpoena will seriously jeopardize the investigation by, among other things, giving targets an opportunity to flee, destroy or tamper with evidence, and change patterns of behavior. See 18 U.S.C. § 2705(b). Some of the evidence in this investigation is stored electronically. If alerted to the existence of the subpoena, the subjects under investigation could destroy that evidence, including information saved to their personal computers.

Section 2705(b) provides that when the government is not required to notify the subscriber or customer that it is serving process on the provider, then the Court may order the provider not to give notice, provided one of the five risks set forth in § 2705(b) is present. For the reasons listed above, the government has shown that there is reason to believe that notice by the provider would cause one of the enumerated harms. The government is proceeding here using a subpoena under 18 U.S.C. § 2703(c)(2). Section 2703(c)(3) provides that when the government proceeds under § 2703(c) (*i.e.*, when it is only seeking records of the provider, and not any content of the subscriber or customer), the government is not required to provide notice to the subscriber or customer. Thus, the government has satisfied all the conditions of § 2705(b).

WHEREFORE, the United States respectfully requests that the Court grant the attached Order directing Google, Inc. not to disclose the existence or content of the attached subpoena,

except that Google, Inc. may disclose the attached subpoena to an attorney for Google, Inc. for the purpose of receiving legal advice.

The United States further requests that the Court order that this application, the subpoena attachment, and any resulting order be sealed for one hundred and eighty (180) days, until January 27, 2017. As explained above, these documents discuss an ongoing criminal investigation that is neither public nor known to all of the targets of the investigation. Accordingly, there is good cause to seal these documents because their premature disclosure may seriously jeopardize that investigation.

Respectfully submitted,

EMILY GRAY RICE
United States Attorney

August 1, 2016

/s/ Nick Abramson



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**SEALED
DOCUMENT****UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE****IN RE: ADMINISTRATIVE SUBPOENAS
TO GOOGLE, INC. PURSUANT TO
18 U.S.C. § 2705(b)**Case No. 1:16-mc-50-AJ

Filed Under Seal – Level I

ORDER

The United States has submitted an application pursuant to 18 U.S.C. § 2705(b), requesting that the Court issue an Order commanding Google, Inc., an electronic communication service provider and/or a remote computing service, not to notify any person (including the subscribers or customers of the account listed in the subpoena) of the existence of the attached subpoena until further order of the Court.

The Court determines that there is reason to believe that notification of the existence of the attached subpoena will seriously jeopardize the investigation, including by giving targets an opportunity to flee, destroy or tamper with evidence, and change patterns of behavior. See 18 U.S.C. § 2705(b).

IT IS THEREFORE ORDERED under 18 U.S.C. § 2705(b) that Google, Inc. shall not disclose the existence of the attached subpoena, or this Order of the Court, to the listed subscriber or to any other person, unless and until otherwise authorized to do so by the Court, except that Google, Inc. may disclose the attached subpoena to an attorney for Google, Inc. for the purpose of receiving legal advice.

IT IS FURTHER ORDERED that the application and this Order are sealed until January 27, 2017.

Date

Andrea K. Johnstone
United States Magistrate Judge
District of New Hampshire

Homeland Security Investigations
275 Chestnut Street
Suite 307
Manchester, NH 03101



**Homeland
Security**

Cover Sheet

Date July 26, 2016

To: Google, Inc.
Google Legal Investigative Support
1600 Amphitheatre Parkway
Mountain View, CA 94043
650-618-1806

Electronic Service Methods:

Fax: (Not available)

E-Mail: USLawEnforcement@google.com

From: Derek M. Dunn

Phone: 603-629-2711

☐ Urgent ☒ Action ☐ Concurrence ☐ FYI

Number of pages including cover: 4

Comments:

Attached is summons #: ICE-HSI-MF-2016-00235.

Please respond by August 23, 2016.

1. To (Name, Address, City, State, Zip Code) Google, Inc. Google Legal Investigative Support 1600 Amphitheatre Parkway Mountain View, CA 94043	DEPARTMENT OF HOMELAND SECURITY SUMMONS to Appear and/or Produce Records 19 U.S.C. § 1509
Summons Number ICE-HSI-MF-2016-00235	

By the service of this summons upon you, **YOU ARE HEREBY SUMMONED AND REQUIRED TO:**

- (A) ☐ **APPEAR** before the U.S. Customs and Border Protection (CBP) Officer or U.S. Immigration and Customs Enforcement (ICE) Special Agent named in Block 2 at the place, date and time indicated to testify and give information.
- (B) ☒ **PRODUCE** the records (including statements, declarations, and other documents) indicated in Block 3 before the CBP Officer or ICE Special Agent named in Block 2 at the place, date and time indicated.


Your testimony and/or production of the indicated records is required in connection with an investigation or inquiry to ascertain the correctness of entries, to determine the liability for duties, taxes, fines, penalties, or forfeitures, and/or to ensure compliance with the laws or regulations administered by CBP and ICE.

Failure to comply with this summons will render you liable to proceedings in a U.S. District Court to enforce compliance with this summons as well as other sanctions.

2. (A) CBP Officer or ICE Special Agent before whom you are required to appear Name Derek M. Dunn Title Special Agent Address 275 Chestnut Street Suite 307 Manchester, NH 03101 Telephone Number 603-629-2711 Fax Number 603-626-1792	(B) Date August 23, 2016 (C) Time 9:00 AM
3. Records required to be produced for inspection Please see attached continuation page.	

You are requested not to disclose the existence of this summons for an indefinite period of time. Any such disclosure will impede this investigation and thereby interfere with the enforcement of federal law.

Issued under authority of section 509, Tariff Act of 1930, as amended by Pub. L. No. 95-410 (19 U.S.C. § 1509); 44 F.R. 2217; Homeland Security Act of 2002

4. Name of person authorized to serve this summons or any other CBP Officer or ICE Special Agent Derek M. Dunn	5. Date of issue By <u>Matthew J. Etre</u> (Signature) JUL 26 2016
	6. Name, title, address and telephone number of person issuing this summons Name Matthew J. Etre Title Special Agent In Charge Address 10 Causeway Street Suite 722 Boston, MA 02222 Telephone Number 617-565-7401

If you have any questions regarding this summons, contact the CBP Officer or ICE Special Agent identified in Block 2.

CERTIFICATE OF SERVICE AND ACKNOWLEDGMENT OF RECEIPT

A. CERTIFICATE OF SERVICE OF SUMMONS		
I certify that I served the summons on the front of this form as follows:		
<input type="checkbox"/> I delivered a copy of the summons to the person to whom it was directed, as follows:	Address or Location	Date
		Time <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.
<input type="checkbox"/> (For corporations, partnerships, and unincorporated associations which may be sued under a common name) I delivered a copy of the summons to an officer, managing or general agent, or agent authorized to accept service of process as follows:	Address or Location	Date
		Time <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.
	Name of person to whom the summons was delivered	
Signature		
Title		Date

B. ACKNOWLEDGMENT OF RECEIPT		
I acknowledge receipt of a copy of the summons on the front of this form.		
Signature		
Title	Date	Time <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.

1. To (Name, Address, City, State, Zip Code) Google, Inc. Google Legal Investigative Support 1600 Amphitheatre Parkway Mountain View, CA 94043	DEPARTMENT OF HOMELAND SECURITY SUMMONS (Continuation) to Appear and/or Produce Records 19 U.S.C. § 1509
Summons Number ICE-HSI-MF-2016-00235	
<p>3. Records required to be produced for inspection (continued)</p> <p>Pursuant to an investigation being conducted by the Department of Homeland Security, Homeland Security Investigations, as authorized by Title 18, United States Code, Section 2703(c)(2), please disclose the following information:</p> <p>All SUBSCRIBER and LOG-IN records pertaining to the E-MAIL ADDRESSES listed below. This includes, but is not limited to, all user-provided identification information such as real name, date of birth, address, zip code, and alternate email addresses; current account information from connection records or records of session times, duration, and length of service (including start date) and types of services utilized; telephone or instrument number or other subscriber number or identity, including any temporary assigned network address; subaccounts; email address information; last known IP data; and radius. This is to include the source of payment for such service (including any credit card information and/or bank account number):</p> <p>Please see attached list.</p> <p>This is a child exploitation investigation. A federal Court Order issued pursuant to 18 USC 2705(b) prohibiting disclosure of this legal process is included with this summons.</p> <p><u>Method of Response:</u></p> <p><u>Preferred:</u></p> <p>Return the requested records in a data file format such as ".XLS", ".CSV", ".TXT", ".TIF", or ".PDF". The data file(s) should be delivered via e-mail to Intelligence Research Specialist Lisa A. LaForte at Lisa.A.LaForte@ice.dhs.gov.</p> <p>NOTE: The ICE e-mail system limits incoming messages containing file attachments to 10 MB. For larger files send the summons response in multiple e-mail messages.</p> <p><u>Alternates:</u></p> <p>The records may be supplied in a file format on a CD-R. If the records are not available in data file format, paper documents will be accepted. The records should be delivered to Intelligence Research Specialist Lisa A. LaForte at U.S. Immigration and Customs Enforcement, 275 Chestnut Street, Suite 307, Manchester, NH 03101.</p> <p>If you have questions, please contact Special Agent Derek M. Dunn at 603-629-2711.</p> <p><i>You are requested not to disclose the existence of this summons for an indefinite period of time. Any such disclosure will impede this investigation and thereby interfere with the enforcement of federal law.</i></p> <p style="text-align: center;">End of Document</p>	

ATTACHMENT A

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